

HOUSE BILL 1419

By Harwell

AN ACT to amend Tennessee Code Annotated, Title 9,  
Chapter 4 and Title 49, Chapter 2, Part 1, relative  
to mental health testing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 4, is amended by adding the  
following language as a new part:

Section 9-4-5701.

(a)

(1) Except as provided in subsection (b) of this section, universal mental  
health, psychiatric or socioemotional screening of juveniles is prohibited in the  
state of Tennessee.

(2) For the purposes of this part universal mental health testing, or  
psychiatric or socioemotional screening means any psychiatric or socioemotional  
screening program in which a set of individuals, other than individuals serving a  
sentence resulting from a conviction for a criminal offense, is automatically  
screened without regard to whether there was a prior indication of a need for  
psychiatric treatment.

(b) Mental health testing, or psychiatric or socioemotional screening in individual  
cases may occur under the following circumstances:

(1) A juvenile's parent, guardian, legal custodian, or caregiver under title  
34, chapter 6, part 3 has provided written, active, informed, voluntary consent  
and signed which may be withdrawn at any time by the parent, guardian, legal  
custodian, or caregiver under title 34, chapter 6, part 3;

(2) A court requires the psychiatric, socioemotional, or mental health screening, evaluation, examination, or testing; or

(3) Emergency testing or screening of an individual under title 33, chapter 6, part 4, or testing or screening done in connection with a disaster or epidemic.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 2, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section 49-2-122.

(a) As used in this section, “psychotropic medication” means a substance that is:

(1) Used in the diagnosis, treatment, or prevention of a disease or as a component of a medication; and

(2) Intended to have an altering effect on perception, emotion, or behavior.

(b) Notwithstanding the provisions of any law to contrary, a local education agency (LEA) may not use the parent's refusal to consent to administration of a psychotropic medication to a student or to a psychiatric screening, evaluation, testing or examination of a child or student as grounds for prohibiting the child from attending class or participating in a school-related activity or as the basis of reporting or charging child abuse, child neglect, educational neglect, or medical neglect. An LEA shall not use nor threaten use of administering school sanctions to a student to coerce parental consent to a psychiatric screening, evaluation, testing or examination. A person employed by an LEA may not require that a student be evaluated or treated with any psychotropic medication or for a particular mental health diagnosis. Only the following LEA personnel may recommend an evaluation, testing, or examination for psychiatric diagnosis and or treatment with written informed, voluntarily signed consent as outlined in § 9-4-

5701(b)(1) that may be withdrawn at any time under title 34, chapter 6, part 3 by the parent, legal guardian, custodian or caregiver who gave such consent:

(1) Psychiatrist;

(2) Physician with expertise in psychiatry as determined by training, education, or experience;

(3) Advanced practice nurse with special certification in mental health or psychiatric nursing;

(4) Advanced practice nurse with expertise in mental health or psychiatric nursing as determined by training, education, or experience;

(5) Psychologist with health service provider designation;

(6) Senior psychological examiner;

(7) Licensed professional counselor; or

(8) Licensed clinical social worker.

(c) Written, informed, active, voluntary consent as outlined in § 9-4-5701(b)(1) that may be withdrawn at any time by the parent, legal guardian, custodian or caregiver under title 34, chapter 6, part 3 must also be obtained before proceeding with any psychiatric treatment recommendations resulting from any psychiatric, mental health, socioemotional screening, evaluation, testing, or examination.

(d) The provisions of subsections (b) and (c) shall not be construed to:

(1) Prevent an appropriate referral under the child find system required under 20 U.S.C. § 1412, as amended with appropriate parental consent procedures as required under 20 U.S.C. § 1414(a)(1)(D)(i);

(2) Prohibit an LEA employee from discussing any aspect of a child's behavior or academic progress with the child's parent or guardian or another school district employee, consistent with federal and state law, including the

requirement of prior parental consent for the disclosure of any education records. Nothing in this subdivision shall be construed to modify or affect parental notification requirements for programs authorized under the Elementary and Secondary Education Act of 1965 (as amended by the No Child Left Behind Act of 2001; Public Law 107-110); or

(3) Prohibit referrals, counseling or support in the event of an emergency or urgent situation to include, but not be limited to, the death, suicide, attempted suicide, murder, attempted murder, serious injury or serious illness of a student, teacher, staff, member of the administration, superintendent, or any other school personnel or significant individual.

(e) Each LEA shall inform each parent, legal guardian, custodian or caregiver of their rights pursuant to this section and § 9-4-5701, and shall provide a copy of the LEA policy on the rights of parents and students as required in § 49-2-211 and a copy of the Protection of Pupil Rights, 20 U. S. C. 1232h, commonly referred to as the Tiahrt Amendment, as amended by the Parents Rights Restoration Amendment to Goals 2000, March 31, 1994, Public Law 103-227, §1017, and included in the No Child Left Behind Law, 20 U. S. C. 6301, et seq.

(f) The local board of education of each LEA shall adopt such policies as may be reasonable and necessary to ensure implementation and enforcement of this section. The local board of education of each LEA shall report to the department of education by July 1, 2008, on the impact of this act.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. Sections 1 and 3 of this act shall take effect upon becoming a law, the public welfare requiring it. Section 2 shall take effect July 1, 2007, the public welfare requiring it.